TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 534

LOUIS JOSEPH ABBATE AND MICHAEL LOUIS FALCONE, PETITIONERS,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 8, 1957

CERTIORARI GRANTED DECEMBER 16, 1957

Supreme Court of the United States

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[fol. 2]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 2697

UNITED STATES OF AMERICA

v.

LOUIS JOSEPH ABBATE, MICHAEL LOUIS FALCONE, CHARLES G. PERRY, alias Robert Perry, JAMES SHELBY.

INDICTMENT—Filed January 23, 1956

The Grand Jury Charges:

That commencing on or about April 1, 1955, and continuing thereafter to on or about May 12, 1955, in the Jackson Division of the Southern District of Mississippi, within the jurisdiction of this Court, and in divers other places within the United States,

Louis Joseph Abbate,
Michael Louis Falcone,
Charles G. Perry, alias Robert Perry,
and James Shelby,

defendants herein, did knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate, and agree together and with each other and with

Norman D. McLeod, alias John Morton, who is named as co-conspirator, but not as defendant hereinafter set [fol. 3] forth.

The aforesaid defendants and their co-conspirators conspired and agreed that they would wilfully and maliciously injure and destroy and wilfully and maliciously cause to be injured and destroyed certain works, property and material known as coaxial repeater stations and micro-wave

towers (hereinafter called "installations"), which were located in the States of Mississippi, Tennessee and Louisiana, and which were essential and integral parts of systems and means of communication operated and controlled by the United States.

That it was further agreed that the defendants and their co-conspirators would wilfully and maliciously interfere in the use and working of communication systems operated and controlled by the United States by damaging same.

That it was further agreed that the defendants and their co-conspirators would wilfully and maliciously obstruct, hinder, and delay the transmission of communications over communication systems operated and controlled by the United States.

That it was a further part of the said agreement that said conspiracy would be accomplished in the following manner, to-wit: It was a part of said scheme and plan that certain of the co-conspirators familiar with and skilled [fol. 4] in the use of dynamite would go to the State of Mississippi and to other States in which the said installations were located for the purpose and with the intention of injuring and destroying the said installations by dynemite. (sic)

It was a further part of said scheme and plan that one of the aforesaid co-conspirators would obtain dynamite, fuses, caps, and other materials in the State of Illinois and to transport and carry the same into the State of Mississippi.

That it was a further part of the said scheme and plan that maps and plans showing the locations of the said installations and the roads giving access thereto would be prepared and delivered to the co-conspirators who agreed to injure and destroy the said installations by the use of dynamite.

That it was a further part of the said scheme and plan that the co-conspirator who undertook to destroy the said installations by dynamite would be directed to the exact location of each of the installations which were to be destroyed by the use of dynamite.

The Grand Jury further charges that the said defendants and co-conspirators, in furtherance of and for the purpose of carrying into execution the said combination, conspiracy, confederation, and agreement, did and performed the following overt acts:

[fol. 5] OVERT ACTS

1. On or about April 19, 1955, at Chicago, Illinois the defendant James Shelby met and conferred with Louis Joseph Abbate, Michael Louis Falcone and Norman D. McLeod, alias John Morton.

2. On or about April 19, 1955, at Chicago, Illinois, the defendant James Shelby delivered to Louis Joseph Abbate, Michael Louis Falcone, and Norman D. McLeod, alias John Morton, three large manila envelopes containing maps and plans showing the locations and certain coaxial repeater stations and micro-wave towers in the States of Tennessee, Louisiana and Mississippi.

3. On or about April 21, 1955 Norman D. McLeod, alias John Morton, traveled from Chicago, Illinois to Jackson, Mississippi, and carried with him suitcases containing dynamite, fuses, caps, and other materials suitable and designed for use as explorers.

4. On or about April 22, 1955 James Shelby checked into the Edwards Hotel, Jackson, Mississippi.

5. On or about April 22, 1955, at Jackson, Mississippi, the defendants, James Shelby and Charles G. Perry, met and conferred with Norman D. McLeod, alias John Morton.

6. On or about April 22, 1955 Charles G. Perry drove Norman D. McLeod, alias John Morton, from Jackson, [fol. 6] Mississippi into Rankin County, Mississippi for the purpose of locating and inspecting installations to be dynamited.

7. On or about April 22, 1955 James Shelby met Norman D. McLeod, alias John Mornton, (sic) and drove McLeod North on U. S. Highway 51 into Madison County, Mississippi to point out installations to be dynamited.

8. On or about April 23, 1955 Charles G. Perry drove Norman D. McLeod, alias John Morton, in and around Jackson, Mississippi.

9. On or about April 25, 1955, at Chicago, Illinois, Louis Joseph Abbate and Michael Louis Falcone caused to be typed copies of maps and plans showing locations of installations in Mississippi, Tennessee and Louisiana.

10. On or about April 28, 1955, on U. S. Highway 49, about 23 miles South of Jackson, Mississippi, in Simpson County, Mississippi, an explosion damaged a repeater station containing a coaxial cable which was an essential and intergral (sic) part of a system and means of communication operated and controlled by the United States.

All in violation of Section 371, and 1362 Title 18, United States Code, and against the peace and dignity of the United States.

/s/ Robert E. Hauberg, United States Attorney.

[fol. 7] A True Bill:

/s/ S. H. McDonieal, Foreman of the Grand Jury.

IN UNITED STATES DISTRICT COURT

MOTION OF JAMES SHELBY AND CHARLES G. PERRY FOR SEVERANCE—Filed May 8, 1956

Come the defendants, James Shelby and Charles G. Perry, ~~respectively, in criminal action #2697 now pending~~ the above entitled case, for the reasons set forth in the subjoined affidavit.

/s/ Quitman Ross, Attorney for James Shelby, /s/ Frank F. Mize, Attorney for Charles G. Perry.

State of Mississippi
Hinds County

Quitman Ross and Frank F. Mize, each being duly sworn, say:

and demand that they be given a separate trial in

That they are counsel for James Shelby and Charles G. Perry, respectively, in criminal action #2697 now pending on the docket of this court, wherein they are jointly indicted with Louis Joseph Abbate and Michael Louis Falcone for conspiracy to violate Section 1362 of Title 18, United States [fol. 8] Code.

That prior hereto, and in May of 1955, the said defendant, James Shelby was jointly indicted in the Criminal Court of Cook County, Illinois, with Norman Douglas McLeod, alias Nelson Garbitt Gifford, alias Nelson Barburr Glifford, alias John Morton, and two of his co-defendants in this case, namely Louis Joseph Abbate and Michael Louis Falcone, based upon the identical facts of this case and being an identical offense except that it was a state court proceeding as shown by a certified copy of the indictment in said case, hereto annexed and made a part hereof.

Thereafter on August 15, 1955, the said co-defendants, Louis Joseph Abbate and Michael Falcone entered their separate pleas of guilty to said indictment and were thereupon sentenced to serve terms of imprisonment for their said offense as shown by certified copies of judgments of the Criminal Court of Cook County, Illinois hereto annexed and made a part hereof.

The defendant, James Shelby pleaded not guilty to said indictment and there was on January 16, 1956, an effective judgment of acquittal as to the said defendant, James Shelby, in that the indictment against him was dismissed and the defendant ordered hence without day, which said order of dismissal is, under Illinois law, res judicata [fol. 9] as to him. A certified copy of said order of dismissal is annexed hereto and made a part hereof.

Affiants are advised and so believe that there are elaborate and lengthy written statements in the nature of confessions made by the said co-defendants Michael Falcone and Louis Joseph Abbate in which they admit the allegations of the indictment in this case and the indictment in the Criminal Court of Cook County, Illinois, and at the same time incriminate and implicate the defendant James Shelby. These statements are verily believed to be accessible to or in possession of counsels for the government and are to be used or sought to be used against the two defendants mak-

ing them. These statements or confessions inseparably link the defendant James Shelby with the actions of the defendants Falcone and Abbate.

The defendants Shelby and Perry are both men of good name, fame and reputation, in that they have never heretofore been charged with or convicted for any offense whatever and have, in this case, from the very beginning denied their guilt and asserted their innocence whereas the said two co-defendants have each pleaded guilty to identical facts charged in this indictment and in addition thereto, the defendant Michael Falcone has been heretofore indicted and convicted for robbery in the Criminal Court of Cook [fol. 10] County, Illinois, as shown by a certified copy of the indictment and other proceedings had therein in General Number 49-866 of the records of the Criminal Court of said Cook County, Illinois, annexed and made a part thereof.

Affiants verily believe that the ends of Justice demand a severance and separate trial for these two defendants and that to force them to trial jointly with the defendants Falcone and Abbate would saddle them with an unbearable, unwarranted and unfair burden, and they would thereby prejudiced. (sic)

Counsel respectfully request to briefly elaborate orally on this motion and subjoined at the convenience of the court.

Witness our signatures on this the 7th day of May, 1956.

/s/ Quitman Ross, /s/ Frank F. Mize.

Sworn to and subscribed before me on this May 8th, 1956.

(SEAL)

Loryce E. Wharton, Clerk, by /s/ M. Alford, Deputy Clerk.

[fol. 11] CERTIFIED COPY OF INDICTMENT—
Filed May 8, 1956

State of Illinois,
County of Cook, ss.

Of the May Term of the Criminal Court of Cook County, in said County and State, in the year of our Lord one thousand nine hundred and fifty five.

Count 1. The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that one James Shelby one Norman Douglas McLeod otherwise called Nelson Garbitt Gifford otherwise Called Nelson Barburr Glifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Falcone otherwise Called Michael Louis Falcone late of the County of Cook, on or about, to wit, the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five in said county of Cook, in the State of Illinois aforesaid, unlawfully, wilfully, frudulently (sic) and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to injure the property of another, to wit: to injure [fol. 12] communication facilities belonging to the Southern Bell Telephone and Telegraph Company, a corporation, without the consent of said Southern Bell Telephone and Telegraph Company, and to injure communications facilities belonging to the American Telephone and Telegraph Company, a corporation, without the consent of said American Telephone and Telegraph Company, by use of explosive, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Count 2. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the people of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby one Norman Douglas

McLeod otherwise called Nelson Garbitt Glifford otherwise called Nelson Garbutt Glifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Falcon otherwise called Michael Louis Falcone late of the county of Cook, on or about, to wit: the ninteenth (sic) day of April in the yeqr (sic) of our Lord one thousand nine hundred and fifty five in said County of Cook, in the State of Illinois aforesaid, umlawfully, (sic) wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each [fol. 13] other and with divers other persons whose names are to said Grand Jurors unknown with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to injure the property of another, to wit: to injure communications facilities belonging to the Southern Bell Telephone and Telegraph Company, a corporation, without the consent of said Southern Bell Telephone and Telegraph Company, and to injure communications facilities belonging to the American Telephone and Telegraph Company, a corporation, without the consent of said American Telephone and Telegraph Company, by use of explosive, contrary to the law and against the peace and dignity of the same People of the State of Illinois.

Count 3. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby one Norman Douglas McLeod otherwise called Nelson Garbitt Gifford otherwise called Nelson Garbutt Gifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Falcon otherwise called Michael Louis Falcone late of the County of Cook, on or about, to wit: [fol. 14] the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five in said County of Cook, in the State of Illinois aforesaid, unlawfully, wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to

injure the property of another and commit a felony, to wit: to destroy, damage or injure or render unusable telephone plants belonging to the Southern Bell Telephone and Telegraph Company, a corporation, and to telephone plants belonging to the American Telephone and Telegraph Company, a corporation by use of explosive, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Count 4. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby one Norman Douglas McLeod otherwise called Nelson Garbitt Gifford otherwise called Nelson Garbutt Gifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate [fol. 15] and one Michael Falcon otherwise called Michael Louis Falcone late of the County of Cook, on or about, to wit, the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five in said County of Cook, in the State of Illinois, aforesaid, unlawfully, wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown, with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickledly (sic) to injure the property of another and commit a felony, to wit: to destroy, damage or injure or render unusable telephone plants belonging to the Southern Bell Telephone and Telegraph Company, a Corporation, and to telephone plants belonging to the American Telephone and Telegraph Company, a Corporation, by use of explosive, contrary to the Law, and against the peace and dignity of the same People of the State of Illinois.

Count 5. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby one Norman Douglas [fol. 16] McLeod otherwise called Nelson Garbitt Gifford

otherwise called Nelson Garbutt Gifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Falcon otherwise called Michael Louis Falcone late of the County of Cook, that on, or about, to wit, the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five in the said County of Cook, in the State of Illinois aforesaid, unlawfully, wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown, with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to injure the property of another and commit a felony, to wit: unlawfully, fraudulently, designedly, wickedly, wilfully and maliciously by explosive of a certain substance (of which is unknown to said Grand Jurors) placed or thrown in, into, upon, under or near property belonging to the Southern Bell Telephone and Telegraph Company, a corporation, and to property belonging to the American Telephone and Telegraph Company, a corporation, to damage or injure such property contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

[fol. 17] Count 6. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby one Norman Douglas McLeod otherwise called Nelson Garbitt Gifford otherwise called Nelson Garbutt Gifford otherwise called John Morton one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Falcon otherwise called Michael Louis Falcone late of the County of Cook, that on, or about, to wit; the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five in said County of Cook, in the State of Illinois aforesaid, unlawfully, wilfully, fraudulently and deceitfully did conspire combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown, with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wick-

edly, to injure the property of another and commit a felony, to wit: unlawfully, fraudulently, designedly, wickedly, wilfully and maliciously by the explosion of a certain substance (of which is unknown to said Grand Jurors) placed or thrown in, into, upon, under or near property belonging to the Southern Bell Telephone and Telegraph Company, a corporation, and to property belonging to the American [fol. 18] Telephone and Telegraph Company, a corporation, to damage or injure such property, contrary to the Law, and against the peace and dignity of the same People of the State of Illinois.

Count 7. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one James Shelby unlawfully, wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are to said Grand Jurors unknown, with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to injure property belonging to the Southern Bell Telephone and Telegraph Company, a corporation, and property belonging to the American Telephone and Telegraph Company, a corporation, and that pursuant to said conspiracy and agreement said James Shelby on, or about, to wit: the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five, in said County of Cook and State of Illinois aforesaid, solicited one Norman Douglas McLeod otherwise called Nelson Garbitt Gifford otherwise called Nelson Garbutt Gifford otherwise called John Morton, one [fol. 19] Louis Joseph Abbate otherwise called Louis Abbate and one Michael Louis Falcone otherwise called Michael Louis Falcone, to injure the said property of said companies by use of explosives, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Count 8. The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do fur-

ther present that one James Shelby unlawfully, wilfully, fraudulently and deceitfully did conspire, combine, confederate and agree together with each other and with divers other persons whose names are said to Grand Jurors unknown, with the fraudulent and malicious intent unlawfully, designedly, wrongfully and wickedly to injure property belonging to the Southern Bell Telephone and Telegraph Company, a corporation, and property belonging to the American Telephone and Telegraph Company, a corporation, and that pursuant to said conspiracy and agreement said James Shelby on, or about, to wit: the nineteenth day of April in the year of our Lord one thousand nine hundred and fifty five, in said County of Cook and State of Illinois aforesaid, solicited one Norman Douglas McLeod [fol. 20] otherwise called Nelson Garbitt Gifford otherwise called Nelson Garbutt Gifford otherwise called John Morton, one Louis Joseph Abbate otherwise called Louis Abbate and one Michael Louis Falcone otherwise called Michael Louis Falcone to injure the said property of said companies by use of explosives, contrary to the Law, and against the peace and dignity of the same People of the State of Illinois.

John Gutknecht, State's Attorney.

State of Illinois,
County of Cook, ss.

I, Sidney R. Olsen, Clerk of the Criminal Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of Indictment, General Number 55-1309, filed May 25th, A. D. 1955 in a certain cause lately pending in said Court, wherein The People of the State of Illinois were Plaintiffs, and Louis Joseph Abbate otherwise called Louis Abbate was Defendant.

(Impleaded)

(SEAL)

Witness, Sidney R. Olsen, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this thirtieth day of April A.D. 1955, /s/ Sidney R. Olsen, Clerk.

[fol. 21] JUDGE'S AND CLERK'S CERTIFICATE

State of Illinois,
County of Cook,
City of Chicago, ss.

I, Cornelius J. Harrington Judge of the Circuit Court of Cook County; and Chief Justice of the Criminal Court of Cook County, in said State, do hereby certify that Sidney R. Olsen, whose name is subscribed to the above certificate of attestation, now is and was at the time of signing and sealing the same, the Clerk of the Criminal Court of Cook County, and keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are, and of right ought to be, attached to all his official acts, as such, in all Courts of Records and elsewhere, and further that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, said County, Thirtieth day of April A.D. 1956.

(SEAL)

/s/ Cornelius J. Harrington, Judge of the Circuit Court of Cook County and Chief Justice of the Criminal Court of Cook County.

[fol. 22] UNITED STATES OF AMERICA

State of Illinois,
County of Cook, ss.

I, Sidney R. Olsen, Clerk of the Criminal Court of Cook County, in and for the County aforesaid, do hereby certify that Cornelius J. Harrington whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, Judge of said Circuit Court of Cook County, and Chief Justice of the Criminal Court of Cook County, and was duly elected, commissioned and qualified to office; that full faith and credit are, and of right ought to be, given to all his official

acts as such, in all Courts of Record in the United States and elsewhere and that his attestation is in due form of law and by the proper officer.

(SEAL)

Given under my hand and the seal of said Court, at Chicago, in said County, this the 30th day of April A. D. 1956, /s/ Sidney R. Olsen, Clerk of the Criminal Court of Cook County.

[fol. 23]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Criminal No. 2697

UNITED STATES OF AMERICA,

v.

LOUIS JOSEPH ABBATA, MICHAEL LOUIS FALCONE, CHARLES G. PERRY, alias ROBERT PERRY, and JAMES SHELBY.

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* * * * * * *

[fol. 730] FRANK FURLIC, called as a witness by the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hauberg:

Q. Will you state your name, please, sir?
A. Frank Furlic.
Q. Mr. Furlic, where do you live?
A. 304 South Delphia Street, Park Ridge, Illinois.

By the Court: Where?
Witness: Park Ridge, Illinois.
By the Court: All right.

By Mr. Hauberg:

Q. What is your occupation?

A. I am an attorney at law.

Q. Do you hold any particular position?

A. Yes, sir. I'm Assistant State's Attorney, Cook County, Illinois.

Q. Would you speak a little louder, Mr. Furlic, so all these gentlemen can hear you? You say Cook County, [fol. 731] Illinois.

A. Yes, sir. The county seat of which is Chicago.

Q. Chicago. Is that where your headquarters is located?

A. Yes, sir.

Q. Now, Mr. Furlic, do you know any of the defendants in this case, Charles Perry, James Shelby, Michael Falcone or Louis Abbata?

A. Yes, sir, I do.

Q. Which ones of them do you know?

A. I know Shelby. I know Falcone and I know Abbata.

Q. Did you have any occasion in connection with your official capacity to talk with any of these defendants or investigate anything back in April of 1955?

A. Yes, sir, I did.

Q. Would you please tell us what contacts, if any, you had with any one of these defendants as to whether any of them made any statement to you, when they were made, or who was the first one of those three that you saw?

A. On the 26th day of April, 1955, I saw Louis Abbata about the hour of four o'clock in the State's Attorney's office in Chicago at twenty-sixth Street and California. With him at the time was William Garrity and a police [fol. 732] officer by the name of Levinson. Abbata was then taken to our chief investigator's office. At that time he was Lieutenant. Today he's Captain John Olson.

Q. Yes, sir. About what time of day did you say that was?

A. About four o'clock.

Q. Do you know why Louis Abbata was brought to your office?

Mr. Bellows: Object if the Court please.

By the Court: If he knows of his own knowledge, but don't repeat what anybody else has said.

By Mr. Hauberg:

Q. Do you know why he was brought to your office?

A. That's a rather ticklish question to answer, Your Honor.

By the Court: Can you state whether he was under the custody of any other officer or——

Witness: Yes, sir.

By the Court: And whether he was brought to your office or not?

[fol. 733] Witness: Yes, sir, I already stated for the record he was brought there by Mr. Garrity and Officer Levinson, for interrogation.

By the Court: Let him tell what happened after that.

By Mr. Hauberg:

Q. And then what happened?

A. Then, I proceeded to question Louis Abbata in the office of Captain Olson.

Q. What were you questioning him about?

A. I was questioning him——

Mr. Bellows: Object, if the Court please. That would be a conclusion of this witness, who has no right to say what the conversation was.

By the Court: That's what it means. Go on. I don't see any difference in what he's saying and what you're saying.

By Mr. Hauberg:

Q. Just state what he said.

A. All right. I asked Louis Abbata his name. He told me his name was Louis Abbata. He further stated he lived [fol. 734] at, I thought he said 7345 South Artesian Avenue. He stated that he was married, had a daughter, that his wife was working and his parents, I believe he said, were living with him. I asked him whether or not he was employed at the time. He said no. He stated that he was working as an insurance man. He also stated that prior to that time he had worked for the Liquid Carbonic Corporation and had worked there for some four years. He further stated that before that he worked for the Mercury

Manufacturing Company. He also stated at that time that when he worked for Mercury Manufacturing Company, that he worked for the United Electrical Workers, and he said that when he joined, er, when he went to work for the Liquid Carbonic, he then joined the United Automobile Workers. At that time he said he became active in union activities. He said that he became a steward and he also stated at that time that he subsequently became what he called a bargaining agent for the union. He also stated that it was at that time that he first met Falcone and it was in connection with his work at Liquid Carbonic that he met McLeod. He also——

Q. You say he met who, now?

A. McLeod.

Q. McLeod?

[fol. 735] A. McLeod, yes, sir.

Q. And Falcone, who is that?

A. Falcone is the defendant who is sitting here in the court room.

Q. Is that Michael Falcone?

A. Michael Falcone, yes.

Q. All right. Then, what else did he say about Falcone and McLeod?

A. Well, he said that Falcone was, I think he said he was an inspector there at the Liquid Carbonic, and he said that McLeod did work, I think he said of a similar nature. I'm not too sure about that. However, he——

Q. Were you questioning him during this time?

A. Yes. This is merely what he is telling me pursuant to questions that I have propounded to him.

Q. Did he know where he was when you were questioning him?

A. Well, I am sure he knew where he was. I don't believe there's any question about that.

Q. All right. This statement he gave you, was it oral or written?

A. At the time the statement was taken, I had one of our State's Attorney's court reporters there, a boy by the name of Essen, and as I asked him questions and he made [fol. 736] answers, those were subsequently taken in shorthand and subsequently reduced to writing.

Q. Well, now, at the time he was making the statement to you, was he telling you this, or answering your questions, freely and voluntarily, or had there been any promise made to him?

Mr. Bellows: Object, Your Honor. That would also be a conclusion, whether it was free or voluntary.

By the Court: The objection is overruled.

Witness: Yes, he was.

By Mr. Hauberg:

Q. Was what?

A. He was answering the questions freely and voluntarily.

Q. Had you or anyone else connected with your office, with your organization, or any other of the law enforcement organizations, promised him anything?

A. No, sir.

Q. All right. Go ahead and continue with what he said.

A. He then further stated that he met a Tony Audio [fol. 737] for the first time. He said that Tony Audio was what he termed a "special representative" for the—or International representatives, rather,—for the United Automobile Workers in that particular area. That he wasn't connected with any particular local, but that it was his job to supervise certain activities within the various locals with-in the various areas. That he got to know Audio very well. He also stated that because of some infection that he had had on his hand, that he left the Liquid Carbonic Corporation and didn't engage too much in union activities, although from time to time he did contact Audio. He did say, also, that among other things he was quite active while he was with the Liquid Carbonic people and with the Mercury Manufacturing people, that he was quite active in strike activities, and that he did say while there was a strike at the Liquid Carbonic Corporation, that he was on what he said was the Strategy Committee, a committee of the local union.

And, then, I proceeded to question him a bit further about the instant case in question, and I asked him when was the first time that he had—I asked him where he had

been arrested. He told me he had been arrested in the telephone company's office there in Chicago. I asked him what he was arrested for. He said he was arrested in [fol. 738] connection with the Southern Bell Telephone strike. I then asked him what he knew about the Southern Bell telephone strike. He told me that he had received a phone call, I think he said about the 15th of April, 1955. I think he said it was in the evening. And, at that time, I asked him who made the phone call and he said Audio made the phone call. I said, "How do you know it was Audio?" He said, "Well, I have known Audio for some time and I know his voice, and he said he was Audio." I said, "What did Audio say to you?" "Audio said——" He said, "Audio said something about that Italian confetti. And I said to Audio that I, er, Italian Confetti? I don't quite get you." He said, "When you're talking about that Italian confetti, I don't want any of that business violence." And Audio said to him, said, "Well, just to scare people." And Audio said at that time, "There's going to be money in it for you," and Abbata said that although he, himself, wouldn't do any of that rough stuff, nevertheless, he felt that he had two men he could contact that he knew, fellow by the name of Falcone and fellow by the name of McLeod. And, then, he said that they talked about each other's families and Audio told him that he would, that someone would contact him concerning the conversation which they had on that particular night.

[fol. 739] Q. Did Abbata tell you if someone contacted him?

A. Yes, Abbata then said that, I think he said it was the following day. I'm not so sure. He said that he received a phone call and he identified the voice as kind of southern voice. And the voice said to him, he said he didn't know who it was, but the voice said to him, "I'm the man Audio said you should contact." And he said, "I don't want too much talking on the phone, but that Jim Shelby is in town".

Mr. Ross: Your Honor, we object to that about Jim Shelby.

By the Court: I'm going to make the same ruling that I made before. I'll let it in and then determine when it's time to charge the jury what the law is.

Mr. Ross: I think I shoud (sic) do one thing, Your Honor, that is, ask the court at this time to declare a mistrial as to the defendant Shelby and grant us a separate trial.

By the Court: That is denied.

Mr. Ross: Now, then, may we have a continuing objec-
[fol. 740] tion to any testimony from this witness referring to the defendant Mr. Shelby.

By the Court: I am not going into any discussion of the picture at this time to tell you why I am making this ruling, but I am making it and I'm making it general, but when it comes time to charge the jury, then, I will tell them what the law is. Go ahead.

By Mr. Hauberg:

Q. All right, sir. Then, what did Abbata say?

A. Then, Abbata stated that that voice said that he was down at the Morrison Hotel, and Abbata said that he told this individual he didn't want to be meeting anybody down at any Morrison Hotel. And, then, he stated that he—he stated that the voice told him he would receive a further phone call concerning any further meeting. Abbata then said after that telephone conversation, he then got in touch with McLeod. I don't recall whether he said he got in touch with McLeod at a tavern at Twenty-First Street in Chicago, or out at his home. I'm not too sure about that. But he said that he talked to McLeod and told McLeod that he thought that it would be a good thing if McLeod was with them, because he didn't know whether or not he, speaking about Abbata, was in trouble or not, and that he thought [fol. 741] he also ought to call Falcone, so that Falcone could go along and be with them at the time. So, he said that he later got in touch with Falcone. How he got in touch with him, I don't know. But he did say that Falcone didn't have a phone at his home, but he nevertheless did reach Falcone. He said it wasn't too long after that that he again received a phone call and he said that the voice told him that this man Shelby that he was talking about would be standing down on the corner of, I think he said the northeast corner of, Madison and Dearborn Streets in

the City of Chicago. At the time he would have a brown envelope in his hand and that they were, at that time, to pick him up.

Q. Did Abbata say that he met with Jim Shelby?

A. Yes. He then stated that later that day that he and Falcone and McLeod then got into Abbata's automobile. I think he said he an Oldsmobile. (sic) That they drove down town. That when they approached the vicinity of Madison and Dearborn Streets, that he talked about making an improper left turn, but nobody apparently paid too much attention to it. Then he saw a man standing on the corner, on a corner there, with an envelope who motioned to him and he then stopped and picked up the person whom he said was a person called Shelby. He then stated [fol. 742] that he and Shelby and Falcone and McLeod then proceeded to what we call the outer drive there in Chicago, and that they went through a short street near the outer drive and they stopped and they began to talk. That, at that time, Falcone—that at that time Abbata said that Shelby told him that there was a strike in the south, that it was a bad strike, that they were tearing dresses and skirts off women in the city where the strike was going on. He said that Shelby told him that he was a union man and that he ought to stick with them and that what he wanted Abbata to do, or Abbata I think he's properly called, that he wanted Abbata to have someone or himself go down there and dynamite a few what he was talking about red huts and white huts. That Abbata at that time said that as far as he was concerned, he was strictly a contact man and that he felt that the fellows to do it were McLeod and Falcone. And he said that while this conversation was going on, that Falcone and McLeod were in the back seat. He then stated that he became a little jittery, because not too far from where they were sitting, he observed squad cars. He said that he identified it by the red dome up on top. And he told Shelby that they shoud (sic) leave there so that they might not be tailed, might not be arrested for interrogation.

Q. Did Abbata tell him where they were?

[fol. 743] A. Abbata said that they then proceeded to Twenty-Second and Wabash Streets, that they proceeded

from Twenty-Second and Wabash over to Eighteenth and Wabash, and he stated that they stopped at that time at a place which was a tavern known as Calvert's Tavern. He said that the four of them then entered Calvert's Tavern.

Q. What four entered Calvert's Tavern?

A. He said he and Shelby and Falcone and McLeod entered Calvert's Tavern; that they sat in a booth and that he said he had ordered a "seven-up" and that then Shelby began to talk.

Q. Did Abbata tell you what Shelby did there in that booth?

A. Yes.

Q. What did Shelby do there, according to Abbata?

A. Abbata said that Shelby then opened an envelope and in the envelope was a large map and what he called "plans", and he said that Shelby would point to certain spots on these plans and designate them as red huts and white huts. He said that Shelby told Abbata at that time that those were the places that they wanted dynamited. Abbata then——

Q. Did Abbata say what happened to those plans?

A. Yes, Abbata said before they left that night, he [fol. 744] said——

Mr. Bellows: Object, Your Honor. I think Mr. Furlic was in the process of testifying when Mr. Hauberg interrupted him and asked another question. I think Mr. Furlic had something more to add to his statement.

By the Court: Well, you can bring it out. He's conducting his side of it and when you get him on cross examination you can bring it out. How much more of this is there going to be?

Mr. Hauberg: Court, please, I imagine he has a good bit more testimony.

By the Court: Well, we're going to quit at this time and I want to impress upon the jury not to talk to anyone while you're recessed.

[fol. 750] Whereupon, Frank Furlic having been called as a witness, direct examination continued as follows:

By Mr. Hauberg:

Q. Mr. Furlic, I believe that when we recessed on yesterday, you were about to continue with the statement that the defendant Abbata made to you as to what happened in the tavern there with reference to certain plans.

A. Yes, sir.

Q. All right, sir. Would you continue, please?

A. Abbata stated to me that the plens (sic) were laid out. He stated to me that——

By the Court: A little bit louder.

A. (Continuing) Sorry. He stated to me that also present at the time were Shelby, Falcone, himself and McLeod. [fol. 751] That at that time Shelby told him that certain designated places on the map were places that were to be dynamited. He also stated at that time that there was some talk between them as to what it was going to cost and what they were going to get and he stated that Shelby stated they were paying the fellows down south two hundred dollars. And with that, McLeod said that was "peanuts". And Abbata stated at that time that far as he was concerned, he wasn't going down south, he was going to be only the contact man. Then, he stated that they proceeded to drive downtown. That he let Shelby off.

And, then, he said to me, he says, "I forgot to tell you." He says, "Before we left, I told, I asked Shelby how about expenses, and he told me that Audio would get in touch with me and there ought to be five hundred dollars in it for you as expenses." He then stated that the following day he received a call from Audio and he said that in his conversation with Audio that he was strictly going to be a contact man and that under no circumstances would he consider anything unless there was some type of expenses and he said Audio told him that he would call him back.

Q. Did Abbata ever tell you when he was talking to you there that he got any expense money?

[fol. 752] A. Yes.

Q. How much expense money did he get?

A. He told me that he got five hundred dollars expense money.

Q. Did he tell you what he did with that expense money?

A. Yes, he said that he gave two hundred dollars of it to McLeod and fifty dollars to McLeod's wife and that another fifty dollars, he gave to Falcone, and the other two hundred dollars he kept for himself.

Q. Did Abbata tell you anything about McLeod getting any dynamite or leaving Chicago?

A. Yes.

Q. All right.

A. He told me, I think it was on the week of the 21st or 22nd, I'm not too sure, that he picked up McLeod and that he said he wouldn't give McLeod any money because he wasn't sure whether McLeod would go down to Mississippi or not, because he figured he might spend the money for something else. So, that, he then picked him up and said he took him over to the I.C. station and at that time he gave him the money.

Q. Did he tell you whether McLeod had any baggage with him when McLeod left up there?

[fol. 753] A. I don't remember that. I think he said he had a bag. I'm not sure.

Q. What else did Abbata tell you with reference to this dynamiting and these plans?

A. As far as the—then, as far as the plans are concerned, he then said it was the following Sunday that McLeod came back, he called him up, and said to him that "you're in trouble with Audio".

By the Court: Who was that in trouble with Audio?

Witness: Abbata.

By the Court: All right.

A. (Continuing) And Abbata then said that he had gotten in touch with Falcone and told Falcone there ought to be an easier way to make a buck by selling the plans to the telephone company there in Chicago. He then said that he called the local office in Chicago and talked with a fellow by the name of "Peck" and that he was then told to call Southern Bell.

By Mr. Hauberg:

Q. Let me ask you this. Did he say anything about making any copies of these plans that Shelby had given [fol. 754] him?

A. Yes, he did.

Q. What did he say about that?

A. At the time we had the plans in the office, the copies. I showed him the copies and I asked him about those. He said that after he had called the telephone company that he and Falcone had gone down town, that he had, I think, either one or two or three originals that he said he showed to a fellow who represented himself as Garrity and that he then returned to Falcone's home and while they were at Falcone's home that he, Abbata, commenced to type and that he wasn't getting along so well; that, then, a little girl by the name of Barbara Navarro typed the plans and he said that he directed Falcone to do the diagraming and to do the writing and the printing on the plans.

Q. Did he tell you that Falcone did anything with reference to the plans?

A. Yes, he did.

Q. What did he tell you about that?

A. He told me that each copy that was typed, that the lines and the names and the feet were all written in by Falcone, and it was about that time that I asked him where the originals were, and he told me they were at home. [fol. 755] I asked him if he would give us written authorization to go to his home and obtain the originals. He said he would. So that I prepared a piece of paper in which he gave our policeman authority to go to his home and obtain the originals. Subsequently to that time, the originals were brought into my office, I showed him each one of the originals, he identified the originals as being originals he had obtained from Shelby at the Calvert Hotel, at the tavern.

Q. All right, now, did he tell you anything else with reference to this matter of plans and Shelby, McLeod and Falcone and this area down here in the south in Mississippi?

A. I think that was what I testified to already. I think that, in substance, is it?

Q. I believe you said you knew the defendant Michael Falcone?

A. Yes, sir.

Q. Did you have any occasion to have a talk with Falcone in connection with these activities that you testified about?

A. Yes, sir, I did.

Q. Tell us where that conversation took place?

A. Subsequent to the arrest of Abbata, Falcone was [fol. 756] arrested and was brought to the State's Attorney's office. He was taken to the same office for interrogation that Abbata was, namely, the Chief Investigator, John Olson's office. At that time, he told me his name was Michael Falcone.

Q. At the time, he was telling you this, I will ask you if any promises had been made to Falcone, whether or not he expected any reward, or anything, for giving you this statement?

A. No, sir, no promises of any kind were made whatsoever.

Q. Would you say whether it was made freely and voluntarily or whether it was forced out of him?

A. I would say it was free and voluntary.

Q. All right, now. Go ahead, sir, and relate what that conversation was.

A. He said he lived at 2224 West Twenty-fourth Street in Chicago and he lived in Chicago most of his life. That he was married and had two children. Said that he worked for the Liquid Carbonic Corporation and had worked there since about 1951. I think he said he was working there at the time of his arrest. He said that he knew Norman McLeod intimately and that he knew Abbata as, he said, financial secretary of the U.A.W. which was the local union [fol. 757] in the Liquid Carbonic Corporation.

Q. Well, did he tell you anything about meeting with McLeod and Abbata anywhere in Chicago?

A. Yes, sir.

Q. In the middle of April, 1955.

A. Yes, he did.

Q. All right, what did he say about that?

A. He said somewhere around the 15th or 16th of April

that he had received a phone call from Abbata, that Abbata told him that he had received a call in which there was some work that had to be done down south, that he said that there was a strike going on down there, that Abbata told him that there was going to have to be some—that he was told there was going to have to be some dynamiting done, and he said as far as he was concerned, he didn't want to have any part of the dynamiting, but he could use a buck.

Falcone then stated that Abbata told him that there was to be a meeting down town with some man that was coming up from the south. And, then, he stated that it was a short time after that that Abbata picked him up and picked up McLeod. That the three of them then drove down into the City of Chicago; that they drove to the what is known as Madison Street and Dearborn; that on the northeast [fol. 758] corner of Dearborn and Madison Streets that a man was picked up who got into the automobile. That he described him as a person with a southern drawl and he said his complexion was somewhat between mine and his and that he had a nose that was somewhat like mine. That he wasn't too sure of the description.

Q. Did he tell you whether or not he was introduced to this man?

A. He said that formally he wasn't introduced, but to the best of his recollection at that time that the name "Shelby" kind of rang a bell. And he said that while they were in the car, he wasn't too sure of what was being said, and that it wasn't until they had reached the vicinity of Eighteenth and Wabash that he heard conversation. He said that at that time that he and this man that he called Shelby and Abbata went into the tavern. He said that McLeod stayed on the outside and he said that while they were in the tavern, he sat there with them and that Shelby took out some plans and he was talking about places that had to be damaged, as he put it, and he said they were talking about dynamiting there, generally, but that he——

Q. Did he say whether McLeod came in while they were there?

A. Then, he said that he went out and when he went out, [fol. 759] then, he said, McLeod went in. And that he

remeined (sic) on the outside while the three of them were inside the tavern and then, in some ten or fifteen minutes, the three of them came out and the four of them drove to the vicinity of what we call "the loop" and at that time they left Shelby off.

He then said that he and McLeod and Abbata talked about what had gone on within the tavern and he said that at that time Abbata said that they were, that they wanted, that he wanted Abbata to get someone to go down south and dynamite some of these spots or positions that had been marked off on the map because of the seriousness of the strike that was going on in the south. That Abbata said that he told Shelby that as far as he was concerned, that he was going to be the contact man, but he told Shelby that he thought he could get McLeod or Falcone to go down there. And Falcone stated at that time that he told Abbata that as far as he was concerned, he wasn't gonna go down south and that he wasn't going to engage in any violence. That he then said that there was some talk there about money and that Abbata said he was to receive a phone call and that he was to receive some expense money. He then stated it was a day or so later, I can't exactly remember which, in which Abbata got in touch with him [fol. 760] and that he and McLeod and Abbata worked together, I think he said, at a tavern, and at that time he said that Abbata gave him a hundred dollar bill and he said that he went into a barber shop and broke the hundred dollar bill.

Q. Who went in the barber shop?

A. He did.

Q. Falcone?

A. That's right. And that he came out and that he kept fifty for himself and gave fifty dollars to Abbata. He said that he didn't see any money given to McLeod at that time. He did say in a subsequent conversation that he had with Abbata, that Abbata told him—he asked him how much money he had gotten, and Abbata said he had gotten five hundred, and he said, "Well, what did——

Q. What was this money for? Did Falcone tell you?

A. Yes, he said that Abbata told him that this five hun-

dred dollars was to be used for expenses for going down to Jackson, Mississippi.

Q. Was anything said about anyone carrying any dynamite to Jackson, Mississippi?

A. No, he said they talked about dynamiting, but about no one carrying any dynamite down there, no, that was not said.

[fol. 761] Q. All right. Go ahead.

A. And, then, he said that later, that during that telephone conversation, that Abbata said to him, he said, "I gave two hundred to McLeod and another fifty to McLeod's wife", and he said he asked Abbata what he did with the rest. He said, "Well, the rest of it was a ten here and a ten there," and then that was, in substance, what the conversation was that occurred at that time.

He said that that was the last he saw of McLeod. He then further said that he received a call from Abbata in which Abbata told him he had heard from McLeod and that McLeod was raising a lot of hell and that he thought that here was a chance now to make some money, or make an extra buck, by selling the plans to the telephone company. And——

Q. Now, did Falcone tell you anything about where the original plans were then or later?

A. Yes, he told me that at the time that they were in the tavern that he saw Shelby give Abbata what he later described as the plans.

Q. Did he tell you that he saw those plans any more after he said Shelby gave them to Abbata?

A. Yes, sir, he did.

Q. When did he say he saw them again? Did he tell you?

A. He said that he saw them again, I think it was, on [fol. 762] the night of the 24th. He said that it was after he and Abbata had driven down town and Abbata—and he and Abbata got out of the car and Abbata gave him the keys and Abbata then took a cab over to where he was to meet this man they called Garrity. And that after Abbata came back and Abbata told him that he had showed this man Garrity, showed him, at least, a semblance of what the plans were, that then the two of them, he said, then went to Falcone's home. And Falcone stated that

after they arrived at his home, that Abbata told—that Abbata then began to type and he wasn't doing a very good job of it and a little Navarro girl who had a date with Falcone's daughter came there and they learned that she knew how to type and they offered her a couple of bucks if she would do some typing for them. And Falcone said that while she was there typing that Abbata was directing him to draw the plans on each one of the documents, which portrayed some particular plant in the respective states. I think it was Mississippi, Louisiana and Tennessee. And then I showed him the respective plans. I showed him some of the copies there in the office. I had him identify each particular group. I asked him there in the office whether he, himself, had drawn those plans and he said he did. I asked him whether or not he, himself, had written what handwriting was on those particular plans and he said that he did.

[fol. 763] Q. Now, the plans he said he had written on, were they the original plans?

A. No, sir, those were the duplicates of the originals.

Q. All right. Then, what did he say happened?

A. He then said that after he had done the diagraming and the typing was done, he said that then Abbata told him that he had another meeting with the telephone company officials, and that he told him that there was talk of some six thousand dollars and with that, he said that Abbata left and the following day, why, Abbata was arrested and Falcone was brought to our office for interrogation.

Q. Well, now in your conversation with the defendants Abbata and Falcone, how many different times was it they talked to you about it?

A. You say both Abbata and Falcone?

Q. Yes, both of them.

A. Abbata talked—I talked to Abbata twice and I talked to——

Q. At the same time or different times?

A. No, at different times.

Q. How many times was it that Falcone discussed this with you?

A. I talked to Falcone on three different occasions.

* * * * * * *

[fol. 1096] APPLICATION FOR PROBATION ON BEHALF OF FALCONE AND ABBATE

Mr. Bellows: Your Honor, on behalf of Falcone and Abbata, I would like to make application for probation. I would like to say this for both of them. Both of them are indicted in Cook County, Illinois, on the same charge and they both pled guilty there and they have received sentences of three months. Abbata has never been in trouble before, Falcone once. I think Falcone, Your Honor, if I may use the term, is a fool. I think he just thought it was smart. Using the vernacular, I think he went along for the ride. I don't think he was deeply involved in the situation.

Furthermore, Your Honor, both men, of course, never came down here. Whatever overt act took place was just a matter of meeting in Chicago. Furthermore, I would like to call to Your Honor's attention this: that almost simultaneously with the conspiracy, because the evidence shows the conspiracy commenced, according to the evidence and I'm not arguing with the evidence at this time, but it commenced approximately the 18th or 19th of April. Almost simultaneously the Defendant Abbata communicated [fol. 1097] with the telephone company in the interest of receiving an award that had been posted. Now, it doesn't seem possible that a man could be guilty of that and at the same time desiring,—he had information and was trying to help them at the same time.

I am saying this in regard to the application for probation that especially Falcone, when the jury and I think it is comprised of twelve able men, twelve ordinary people, who never had seen these people before, felt that Falcone was, as I have used the word, just a duck. He just went along. He's been punished already in Cook County for the same identical thing, conspiracy as charged here.

So, Your Honor, I submit to you that something ought to be done if Abbata, who is responsible—and I'm looking at it from the point of view of prosecution—had it not been for Abbata—I'm not painting any roses on him as to what he's done, for many reasons,—but had it not been for Abbata, he wouldn't have been arrested. Nobody would have been involved. Mr. Falcone, I think, Your Honor may

have had a report from the Probation Department of Cook County that he had paid his debt to society in one instance. I know something about that. I think he's a pretty decent individual, a hard-working man, a man with a family. [fol. 1098] I feel, Your Honor, if you want justice done to the Government of the United States, that you grant him probation.

Your Honor said, in denying the motions, that he had had forty-odd years on the bench and I an (sic) sure Your Honor has consideration and sympathy and human kindness of heart. For Falcone, I plead you grant probation.

Mr. Hauberg: Court, Pleace, (sic) the Government will object to probation for any of these defendants. Although Abbata and Falcone were charged from Chicago, we contend it was not the identical offense, but an offense against the State of Illinois. No mention was made of the indictment in Chicago, which was Government owned, operated and controlled communication lines, and I think the indictment here would indicate that. We certainly do oppose any probation in this case.

Mr. Bellows: May I say this: Other than as stated in the indictment, the Government possibly wasn't involved. But it was the same offense. Otherwise, it would have been tried in Illinois.

By the Court: Of course, you recognize that no matter [fol. 1099] what penalty they received up there in Illinois, the State law wouldn't hold in Federal Court.

* * * * * * *

[fol. 1116]

IN UNITED STATES DISTRICT COURT

JURY VERDICT—Filed June 22, 1956

This day came into open court the United States Attorney, prosecuting for and on behalf of the United States, and also came Charles A. Bellows, Frank F. Mize, Quitman Ross and Thomas S. Adair, attorneys of record for the defendants, and the defendants Louis Joseph Abbate, Michael Louis Falcone, Charles G. Perry, alias Robert Perry, and James Shelby, in their own proper persons,

who on May 8th, 1956 had been legally arraigned and had plead not guilty to the charge in the above styled and numbered indictment against them; and of that they put themselves upon the country; and the Unites (sic) States Attorney did the like.

Thereupon came Willie W. Decell and eleven other good and lawful men who composed the jury and who, having been examined, accepted and sworn to try the issue joined between the United States and the defendants, after hearing the testimony of all witnesses, the arguments of counsel, and the instructions of the Court, and having duly considered the same, returned into open court the following verdict:

> "We, the Jury, Find the Defendants, Louis Joseph Abbate, Michael Louis Falcone, Charles G. Perry, [fol. 1117] James Shelby, Guilty as Charged in the Indictment. We, the Jury, Recommend Leniency for Michael Louis Falcone, Charles G. Perry."

Whereupon the Court deferred imposition of sentence against each of said defendants, Louis Joseph Abbate, Michael Louis Falcone, Charles G. Perry, alias Robert Perry, and James Shelby and directed that said defendants be released on their present court appearance bonds until July 9th, 1956.

This the 22nd day of June, 1956.

[fol. 1124]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI—JACKSON DIVISION

[Title omitted]

SENTENCE OF ABBATE—July 9, 1956

On this 9th day of July, 1956, again came the attorney for the government and the defendant appeared in person and by his attorney, Charles A. Bellows;

It is adjudged that the defendant has been convicted upon his plea of Not Guilty, and a Verdict of Guilty of

the offense of violating Section 371, Title 18, U.S.C.; knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate, and agree to violate Section 1362 of Title 18, U.S.C.: injure and destroy, and caused to be injured and destroyed, certain works, property and material known as coaxial repeater stations and micro-wave towers which were located in the States of Mississippi, Tennessee and Louisiana, and which were essential and integral parts of systems and means of communication operated and controlled by the United States, and to interfere in the use and working of communication systems operated and controlled by the United States by damaging same, and [fol. 1125] to obstruct hinder, and delay the transmission of communications over communication systems operated and controlled by the United States, and in furtherance of and for the purpose of carrying into execution the said combination, conspiracy, confederation, and agreement, did and performed certain overt acts,

as charged in Court #1,

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of——

Three (3) Years and pay a fine in the amount $1,000.00;

and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Adjudged that upon the filing of a bond in the sum of $5,000.00 approved by a United States Commissioner for the Southern District of Mississippi, that execution of the above sentence be stayed until July 19th, 1956, and [fol. 1126] that said defendant surrender himself to the

custody of the United States Marshal for the Southern District of Mississippi at Jackson, Mississippi by four (4) o'clock, P.M. on July 19th, 1956 to begin serving said sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Ben C. Dawkins, Sr., United States District Judge.
Loryce E. Wharton, Clerk.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI—JACKSON DIVISION

[Title omitted]

SENTENCE OF FALCONE—July 9, 1956

On this 9th day of July, 1956, again came the attorney for the government and the defendant appeared in person [fol. 1127] and by his attorney, Charles A. Bellows,

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty, and a Verdict of Guilty of the offense of violating Section 371, Title 18, U.S.C. knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate, and agree to violate Section 1362 of Title 18, U.S.C.; injure and destroy, and cause to be injured and destroyed, certain works, property and material known as coaxial repeater stations and micro-wave towers which were located in the States of Mississippi, Tennessee and Louisiana, and which were essential and integral parts of systems and means of communication operated and controlled by the United States, and to interfere in the use and working of communication systems operated and controlled by the United States by damaging same, and to obstruct, hinder, and delay the transmission of communications over communication systems operated and controlled by the United States, and in furtherance of and for the

purpose of carrying into execution the said combination, conspiracy, confederation, and agreement, did and performed certain overt acts, as charged in count #1, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

[fol. 1128] It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

One (1) Year.

It Is Adjudged that upon the filing of a bond in the sum of $5,000.00 approved by a United States Commissioner for the Southern District of Mississippi, that execution of the above sentence be stayed until July 19th, 1956, and that said defendant surrender himself to the custody of the United States Marshal for the Southern District of Mississippi at Jackson, Mississippi by four (4) o'clock P.M. on July 19th, 1956 to begin serving said sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Ben C. Dawkins, Sr., United States District Judge.

/s/ Loryce E. Wharton, Clerk.

[fol. 1190]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16226

LOUIS JOSEPH ABBATE, MICHAEL LOUIS FALCONE, CHARLES G. PERRY and JAMES SHELBY, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court for the Southern District of Mississippi

OPINION—August 8, 1957

Before Rives, Jones and Brown, Circuit Judges.

Rives, Circuit Judge: The four appellants were jointly indicted for conspiring[1] to commit the offense denounced by 18 U.S.C.A. 1362,[2] that is, willfully or maliciously to [fol. 1191] injure or destroy means of communication operated or controlled by the United States. The overt acts charged extended over a period of ten days, from April 19

[1] In violation of the general conspiracy statute covering a conspiracy "to commit any offense against the United States." 18 U.S.C.A. §371.

[2] "§1362. *Communication lines, stations or systems*

"Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone, or cable, line, station, or system, or other means of communication, operated or controlled by the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communication over any such line, or system, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

to April 28, 1955. A strike was then going on by the Communication Workers of America, CIO, against the Southern Bell Telephone and Telegraph Company.[3]

The defendants Shelby and Perry were officers of the Communication Workers of America, Shelby being an assistant to a vice-president stationed in Washington, D. C. and Perry being President of the Jackson, Mississippi local of that union. Abbate and Falcone were residents of Chicago, Illinois. Norman D. McLeod, also named in the indictment as a co-conspirator but not indicted, was on parole from the Oklahoma State Penitentiary where he had been serving a sentence for armed robbery. He turned state's evidence and was the first and perhaps the principal witness for the Government.

Prior to arraignment, Shelby and Perry filed a joint motion for a severance and separate trial, setting out that Abbate and Falcone had been convicted in the Criminal Court of Cook County, Illinois[4] for a crime based upon the identical acts charged in this case, and that, subsequent [fol. 1192] to their arrests in Illinois, Falcone and Abbate had made lengthy confessions and statements implicating Shelby in the alleged conspiracy. Their motion for severance was overruled.

McLeod's testimony consumes nearly 200 pages of the typed record. He testified in detail to the formation of the conspiracy and to the acts of each of the conspirators. If believed by the jury, his testimony sufficed for the conviction of all four defendants. Its credibility, however, was severely attacked, not only because of its inherent weakness as the testimony of a co-conspirator, but also because of his conviction of grand theft in California and of armed robbery in Oklahoma. Further, McLeod admitted to a long career of criminal dynamiting, and had refused to testify for the Government until assured by one of the attorneys for the telephone company that "he would see to it" that McLeod was not indicted for conspiracy, and, apparently,

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[3] According to the testimony, the strike began about March 14 and continued until about May 20, 1955.

[4] In their pre-sentence hearing it was brought out that they pleaded guilty and received sentences of three months.

that promise had been kept. The Government, therefore, made every effort to corroborate McLeod's testimony.

The taxicab driver who had transported McLeod from Canton, Mississippi to Jackson, Mississippi was produced, as was the Chicago bartender in whose tavern the conspiracy had been hatched. Abbate was the only conspirator other than McLeod whom the bartender could definitely identify. The Government then introduced an investigator for the Illinois Bell Telephone Company and a detective attached to the Chicago Police Department, who testified at great length concerning the statements and admissions of Abbate which did corroborate McLeod [fol. 1193] in many particulars, including operation sheets and maps showing details of the planned criminal dynamiting. Over the strenuous objections of Shelby and Perry, the testimony as to Abbate's statements and confessions was admitted for the time being as against all four defendants, with the court stating,

> "After its over, I shall tell the jury as to how to weigh the evidence. It's incomplete at this time. The case is incomplete and I, myself, I am not fully informed to instruct the jury."

This testimony was received about the middle of the week-long trial.

The Government continued to present a most impressive case. It introduced experts to prove that the Government operated and controlled many of the telephone circuits planned for destruction. It showed by former co-workers of Shelby and of Perry that they had worked on Government circuits and were familiar with their operation and control. It proved Shelby's transportation to Chicago and his registration at a hotel there under an assumed name. It proved by a stenographer that she had retyped the operation plans at the instance of Abbate and Falcone. It proved by two young women residents of Jackson, Mississippi, that, at Perry's request, one of them had accompanied McLeod on a tour of inspection to familiarize himself with the installations to be dynamited, the young woman posing as his wife to allay suspicion in the event they were questioned. As an impressive closing witness, the Government

introduced Frank Furlic, Esquire, Assistant State Attorney of Chicago, Illinois, who had interviewed Abbate and Fal-
[fol. 1194] cone. The court again declined a mistrial and separate trial as to Shelby and Perry, and declined to limit the consideration of Abbate's and Falcone's statements to the one making the statements, stating that "* * * when it comes time to charge the jury, then, I will tell them what the law is."

At four fifteen on Friday afternoon, the last day of the trial, the court commenced its lengthy (more than forty typed pages) charge to the jury. When that charge had been more than half completed, the court finally got around to instructing the jury as follows:

> "Now, as to these two men, when they were arrested by the officers and were placed in prison, they no longer had any power to commit acts or to do things that might bind the others and for that reason, while I had some question in my mind at first, a careful examination of the law has convinced me that I should charge you that insofar as their statements to the police officers up there are concerned, and to the extent that they may involve anybody else, it is not to be considered against the other person. In other words, it can be considered against them alone and it can, even though they were out of the conspiracy, that evidence is admissible against them for the purpose of proving that they were parties to the conspiracy. In other words, they can make admissions insofar as they are concerned and it is receivable in evidence to be received along with all the other evidence to determine whether they were parties to the conspiracy."

[fol. 1195] It is not necessary now to rule on whether the district court abused its discretion in overruling the joint motion of Shelby and Perry for a trial separate from that of Abbate and Falcone,[5] for upon the plainest of principles it is clear that the judgments of conviction against them must be reversed. At the time of their statements, Abbate and Falcone were no longer parties to the con-

[5] See Schaffer v. United States, 221 F. 2d 17, 19 (5th Cir. 1955).

spiracy. Permitting their statements to be received in evidence against Shelby and Perry was error which could not be cured by the mild admonition contained in the court's final charge to the jury.[6]

As against Abbate and Falcone, the case is different. They undertook to withdraw from the conspiracy and to secure a bid of some six thousand dollars from the telephone company for the maps and operation plans. They had themselves, however, already committed overt acts and had dispatched McLeod on his mission of criminal destruction. Their crime was then complete,[7] and their subsequent withdrawal could be considered only in the fixing of their punishment.

While the conspiracy was in progress, Abbate and Falcone were bound by the knowledge of Shelby and Perry that many of the circuits to be destroyed were operated and controlled by the Government. Further, the jury could well find that they conspired to stop all communications over any of the cables or facilities regardless of who oper- [fol. 1196] ated or controlled the circuits, and were bound by what would have been the natural consequences of their conspiracy.[8]

The destruction by dynamite of some of the facilities near Jackson, Mississippi occurred on April 28, two days after Abbate and Falcone had been arrested in Chicago. Such acts, however, stand upon a different footing from declarations of co-conspirators, and were relevant as additional proof of the conspiracy.[9] The facilities destroyed

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[6] Delli Paoli v. United States, 352 U.S. 232 (1957); Lutwak v. United States, 344 U.S. 604, 617, 618 (1953); Krulewitch v. United States, 336 U.S. 440, 443 (1949); Fiswick v. United States, 329 U.S. 211, 217 (1946); Scarborough v. United States, 232 F. 2d 412, 415 (5th Cir. 1956).

[7] See United States v. Britton, 108 U.S. 199 (1883); United States v. Beck, 118 F. 2d 178 (7th Cir. 1941); Eldredge v. United States, 62 F. 2d 449 (10th Cir. 1932).

[8] See Pereira v. United States, 347 U.S. 1 (1954); Clark v. United States, 213 F. 2d 63, 65 (5th Cir. 1954); Williams v. United States, 295 Fed. 302, 305 (5th Cir. 1923); United States v. Anderson, 101 F. 2d 325, 330 (7th Cir. 1939).

[9] Lutwak v. United States, 344 U.S. 604, 617 (1953); Eldredge v. United States, 62 F. 2d 449, 451 (10th Cir. 1932).

were among those included in the criminal plans. Shelby and Perry were still at large, and the jury could reasonably infer that they were still acting pursuant to the conspiracy.

There was ample evidence from which the jury could have found that, though the facilities were owned by the telephone company, many of the circuits were under full time operation and control by the Government, and that the telephone company could not even make repairs on such circuits without first obtaining the Government's permission. The statute, 18 U.S.C.A. §1362, Footnote 2, *supra,* does not require that the Government own the lines or means of communication, but only that they be "operated or controlled by the United States." At least six witnesses testified to facts from which the jury could find such operation or control. Since that issue was so [fol. 1197] strongly controverted, we find no reversible error in admitting the testimony of the two Army officers stressing the importance of the lines of communication to the National defense.

As to Abbate and Falcone, the judgments are affirmed, and as to Shelby and Perry, the judgments are reversed and the cases remanded.

Affirmed in Part and Reversed and Remanded in Part.

[fol. 1198]

IN UNITED STATES COURT OF APPEALS

No. 16226

LOUIS JOSEPH ABBATE, MICHAEL LOUIS FALCONE, CHARLES G. PERRY and JAMES SHELBY,

v.

UNITED STATES OF AMERICA.

JUDGMENT—August 8, 1957

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgments of the said District Court as to Abbate and Falcone in this cause be, and the same are hereby, affirmed; and as to Shelby and Perry, that said judgments be, and the same are hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court in accordance with the opinion of this Court.

[fol. 1221]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF ORDER DENYING REHEARING—September 9, 1957

The petition for rehearing on behalf of the appellants Louis Joseph Abbate and Michael Louis Falcone in the above styled and numbered cause is hereby denied.

[fol. 1225] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1226]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—December 16, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted limited to question 2 presented by the petition for the writ which reads as follows:

"Whether the petitioners were twice placed in jeopardy in violation of the Fifth Amendment to the Constitution of the United States, where the evidence shows that they had been previously convicted in the Courts of the State of Illinois of the crime of conspiracy to destroy the property of the Southern Bell Telephone Company, upon the same facts as were presented in the Courts of the United States, and upon which they were convicted of conspiracy to destroy a communications line operated or controlled by the United States."

The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.